

(g) Any other position in a category for which payment of relocation incentives has been approved by OPM at the request of the head of an executive agency.

§ 575.204 Ineligible categories of employees.

An agency may not pay a relocation incentive to an employee in—

(a) A position to which an individual is appointed by the President, by and with the advice and consent of the Senate;

(b) A position in the Senior Executive Service as a noncareer appointee (as defined in 5 U.S.C. 3132(a)(7));

(c) A position excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character; or

(d) A position not otherwise covered by the exclusions in paragraphs (a), (b), and (c) of this section—

(1) To which an individual is appointed by the President without the advice and consent of the Senate;

(2) Designated as the head of an agency, including an agency headed by a collegial body composed of two or more individual members; or

(3) In which the employee is expected to receive an appointment as the head of an agency.

§ 575.205 Applicability to employees.

(a) An agency may pay a relocation incentive under the conditions prescribed in this subpart to—

(1) An employee of the Federal Government who must relocate to a different geographic area without a break in service to accept a position listed in § 575.203 in an agency when the position is likely to be difficult to fill as determined under § 575.206; or

(2) An employee of an agency who must relocate to a different geographic area (permanently or temporarily) to accept a position listed in § 575.203 when the position is likely to be difficult to fill as determined under § 575.206.

(b) An agency may pay a relocation incentive under paragraph (a) of this section when an employee must relocate to accept a position or assignment in a different geographic area. A posi-

tion is considered to be in a different geographic area if the worksite of the new position is 50 or more miles from the worksite of the position held immediately before the move. If the worksite of the new position is less than 50 miles from the worksite of the position held immediately before the move, but the employee must relocate (*i.e.*, establish a new residence) to accept the position, an authorized agency official may waive the 50-mile requirement and pay the employee a relocation incentive subject to the requirements of this subpart. In all cases, the employee must establish a residence in the new geographic area before the agency may pay a relocation incentive to the employee.

(c) A relocation incentive may be paid only when the employee's rating of record (or an official performance appraisal or evaluation under a system not covered by 5 U.S.C. chapter 43 or 5 CFR part 430) for the position held immediately before the move is at least "Fully Successful" or equivalent.

§ 575.206 Authorizing a relocation incentive.

(a) *Authority of authorized agency official.* An authorized agency official retains sole and exclusive discretion, subject only to OPM review and oversight, to—

(1) Determine when a position is likely to be difficult to fill under paragraph (b) of this section;

(2) Approve a relocation incentive for an employee under § 575.205;

(3) Establish the criteria for determining the amount of a relocation incentive and the length of a service period under §§ 575.209 and 575.210, respectively;

(4) Request a waiver from OPM of the limitation on the maximum amount of a relocation incentive under § 575.209(c); and

(5) Establish the criteria for terminating a service agreement under § 575.211.

(b) *Factors for determining when a position is likely to be difficult to fill.* An agency in its sole and exclusive discretion, subject only to OPM review and oversight, may determine that a position is likely to be difficult to fill if the agency is likely to have difficulty

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recruiting candidates with the competencies required for the position (or group of positions) in the absence of a relocation incentive. An agency must consider the following factors, as applicable to the case at hand, in determining whether a position (or group of positions) is likely to be difficult to fill in the absence of a relocation incentive and in documenting this determination as required by § 575.208:

(1) The availability and quality of candidates possessing the competencies required for the position, including the success of recent efforts to recruit candidates for similar positions using indicators such as offer acceptance rates, the proportion of positions filled, and the length of time required to fill similar positions;

(2) The salaries typically paid outside the Federal Government for similar positions;

(3) Recent turnover in similar positions;

(4) Employment trends and labor-market factors that may affect the agency's ability to recruit candidates for similar positions;

(5) Special or unique competencies required for the position;

(6) Agency efforts to use non-pay authorities, such as special training and work scheduling flexibilities, to resolve difficulties alone or in combination with a relocation incentive;

(7) The desirability of the duties, work or organizational environment, or geographic location of the position; and

(8) Other supporting factors.

(c) An agency may determine that a position (or group of positions) is likely to be difficult to fill if OPM has approved the use of a direct-hire authority applicable to the position (or group of positions) under 5 CFR part 337, subpart B.

[70 FR 25743, May 13, 2005, as amended at 70 FR 74996, Dec. 19, 2005]

§ 575.207 Agency relocation incentive plan and approval levels.

(a) Before paying relocation incentives under this subpart, an agency must establish a relocation incentive plan. This plan must include the following elements:

(1) The designation of officials with authority to review and approve payment of relocation incentives, subject to paragraph (b) of this section, including;

(2) The categories of employees who are prohibited from receiving relocation incentives;

(3) Required documentation for determining that a position (or group of positions) is likely to be difficult to fill;

(4) Any requirements for determining the amount of a relocation incentive;

(5) The payment methods that may be authorized;

(6) Requirements governing service agreements which, at a minimum, must include—

(i) The criteria for determining the length of a service period under a service agreement;

(ii) The conditions for terminating a service agreement; and

(iii) The obligations of the agency and the employee, as applicable, if an agency terminates a service agreement; and

(7) Documentation and recordkeeping requirements sufficient to allow reconstruction of the action and fulfill the requirements of §§ 575.212 and 575.213.

(b)(1) Except as provided in paragraph (b)(2) of this section, an agency official who is at least one level higher than the employee's supervisor must review and approve each determination to pay a relocation incentive, unless there is no official at a higher level in the agency.

(2) The higher level approval required by paragraph (b)(1) of this section is not needed when approving coverage of individual employees under a previously approved relocation incentive authorization if the case-by-case approval requirement is waived under § 575.208(b).

(c) Unless the head of the agency determines otherwise, an agency relocation incentive plan must apply uniformly across the agency.

§ 575.208 Approval criteria and written determination.

(a)(1) For each determination to pay a relocation incentive under this subpart, an agency must document in writing—